



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,280	06/15/2001	Todd A. Thompson	9345.17121-CON 2	8625
26308	7590	09/17/2004	EXAMINER	
RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			SMITH, RUTH S	
			ART UNIT	PAPER NUMBER
			3737	

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/882,280	Applicant(s) THOMPSON ET AL.	
	Examiner Ruth S Smith	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/12/02, 5/29/03</u> . | 6) <input type="checkbox"/> Other: ____. |

Drawings

The informal drawings filed in this application are acceptable for examination purposes. When the application is allowed, applicant will be required to submit new formal drawings.

Specification

The disclosure is objected to because of the following informalities: On page 1, applicant should update the status of the continuing data. Appropriate correction is required.

Claim Objections

Claim 17 is objected to because of the following informalities: In claim 17, "the coupling assembly" lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4,6,7,9-10,12-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Talish et al ('070). The claims are directly readable on Talish et al which discloses a system for applying ultrasound to the thoracic cavity of a patient comprising an electric signal generating machine 12, an ultrasound applicator 16, and an assembly for placing the applicator on the patient. The assembly includes a quick release mechanism as seen at the end of straps 20 in figure 1 and a quick release material as seen by the Velcro in figure 5. As seen in figure 1, the assembly can include a halter worn about the chest and shoulders. The electrical signal generating machine is battery

powered in that the device 12 is disclosed as being the same structure as that used in US Patent No. 5,556,372 which discloses use of a battery 32. As seen in figures 19-22, the applicator includes a housing that holds a fluid (gel), an ultrasound conducting interface, a contour-conforming interface with skin, a skirt, and a coupling assembly. With regard to claim 7, multiple applicators can be used, therefore the assembly is capable of allowing another treatment device to be placed on the chest in the form of a second transducer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Talish et al. Talish et al disclose a system for applying ultrasound to the thoracic cavity of a patient comprising an electric signal generating machine 12, an ultrasound applicator 16, and an assembly for placing the applicator on the patient. In the absence of any showing of criticality, the specific type of assembly used to affix the transducer to the patient would have been an obvious design choice of known equivalents in the art.

Claims 8,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talish et al ('070) in view of Peterson et al. Talish et al disclose a system for applying ultrasound to the thoracic cavity of a patient comprising an electric signal generating machine 12, an ultrasound applicator 16, and an assembly for placing the applicator on the patient. Talish et al fails to specifically disclose the operating parameters of the ultrasound energy or the use of a circulating fluid. Peterson et al is just one example of many which disclose the operating parameters of the therapeutic ultrasound as set forth in the claim. It would have been obvious to one skilled in the art to have modified Talish et al such that the operating parameters are as taught by Peterson et al in that such are well known operating parameters for therapeutic ultrasound which will not cause harm to the patient. With respect to claim 11, it is known to use a coupling agent to couple the ultrasound into the body without attenuation caused by it passing through air. It is well known to use circulating water as this agent as seen in Peterson et al. Therefore, it would have been obvious to one skilled in the art to have modified Talish et al such that the gel is replaced by circulating water as the coupling agent. Such a modification merely involves the substitution of one well known type of coupling agent for another.

Claims 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talish et al ('070) in view of Barsotti et al. Talish et al disclose a system for applying ultrasound to the thoracic cavity of a patient comprising an electric signal generating machine 12, an ultrasound applicator 16, and an assembly for placing the applicator on the patient. Talish et al fails to specifically disclose the use of either or both continuous or pulsed wave ultrasound. Barsotti et al disclose that ultrasound therapy can be provided in either continuous wave mode or pulsed wave mode. Barsotti et al further disclose that various operating modes can be selected and varied depending upon the treatment desired. The modes can comprise different output power levels and are either pulsed or continuous wave ultrasound. In the absence of any showing of unexpected results the specific operating parameters selected would have been an obvious design choice without undue experimentation for achieving the desired effect.

Art Unit: 3737

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S Smith whose telephone number is (703) 308-3063. The examiner can normally be reached on M-F 5:30 AM- 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on (703) 308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ruth S Smith
Primary Examiner
Art Unit 3737

RSS